

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Petition of Boston Edison Company and  
Commonwealth Electric Company, d/b/a NSTAR  
Electric, for Approvals relating to the Renegotiation  
of Purchase Power Agreements with  
Northeast Energy Associates Limited Partnership

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D.T.E. 04-85

**ATTORNEY GENERAL'S APPEAL OF THE HEARING OFFICER'S DECEMBER 2,  
2004 RULING**

**I. INTRODUCTION**

Pursuant to 220 C.M.R. §§ 1.06(6)(d)(2), the Attorney General seeks appeal the Hearing Officer's December 2, 2004 decision ("Order"). The Attorney General asks the Department to overturn the Hearing Officer's Order disallowing the Attorney General's supplemental record request to Boston Edison Company and Commonwealth Electric Company, d/b/a NSTAR Electric, (the "Company") for clarification of the Company's response to RR-AG-3 and order the Company to answer the Attorney General's supplemental request.

**II. STANDARD OF REVIEW**

The Department's procedural rules provide the presiding officer with the discretion to make all decisions regarding the admission or exclusion of evidence or any other procedural matters which may arise in the course of the proceeding. 220 C.M.R. § 1.06(6)(a); *see also Western Massachusetts Electric Company*, D.T.E. 97-120-3, p. 6 (1998). Discretion is not unlimited. Where a presiding officer abuses his or her discretion, the Department may overturn a ruling or decision of the presiding officer.

### III. ARGUMENT

The Department should grant this appeal and allow the Company to respond to the Attorney General's November 29, 2004 supplemental request. In RR-AG-3, the Company's expert witness, Mr. Hevert, was asked to take the Henwood forecast numbers for the SEMA Rhode Island region and extract from that Mr. Hevert's calculation of what Henwood has included for LICAP. Tr. 1, p. 118. Mr. Hevert was then to add back to that LICAP calculations from the Company's November 4, 2004 testimony in docket FERC E03-563-030 (Exh. AG-1, p. 14), making assumptions to go beyond the forecast period in that testimony. *Id.* Mr. Hevert was to convert those numbers so that they would all be on a dollar-per-kilowatthour basis and recalculate its exhibit AG-1-38, which is Exhibit NSTAR-RBH-6 recalculated to include the latest Henwood 2004 Fall forecast. *Id.* Mr. Hevert was also asked to fully explain all of his assumptions. *See* Tr. 1, p. 114.

The Company's response to RR-AG-3 merely reiterated what Mr. Hevert stated on the record, that he was not aware of how Henwood quantified the capacity value in its market price forecasts. RR-AG-3; Tr. 1, p. 112-113. The purpose of the record request, in part, was to obtain a reasonable explanation of Henwood's quantification of capacity values, not a restatement of what Mr. Hevert did not know in the evidentiary hearing. *See* Tr. 1, pp. 112-118. Mr. Hevert does not explain his assumption that the Capacity Revenue Values on Table 5-4 of the Henwood Fall 2004 Electricity and Fuel Price Outlook (see Exh. AG-1-36 (Supp), Att. AG-1-36 (a)(Supplemental)(Confidential Bulk))<sup>1</sup> reflect Henwood's projected capacity values. RR-AG-3.

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<sup>1</sup> The Attorney General did not receive this supplemental, technical, bulk exhibit until November 18, 2004, the day of the evidentiary hearing.

Mr. Hevert also did not explain the reasoning for his several of his other assumptions: (1) why the Clearing Price by Zone values from Exh. AG-1 were assumed to be nominal dollars; (2) why it is appropriate to reflect a 95% availability factor for NEA in converting the per kW values in Exh. AG-1 to per kWh values and (3) why a system-wide capacity factor of 62 percent was assumed in converting Henwood's Capacity Factor Values to a dollar-per-kilowatthour basis. *See* RR-AG-3, Confidential Attachments (a) and (b).

On November 29, 2004, the Attorney General asked the Company questions about the assumptions Mr. Hevert made in the response to RR-AG-3 because those assumptions were not fully explained. The Company did not object to answering these questions. It does not go beyond what the Company was originally asked.

The LICAP prices by ISO-NE will add a significant cost to the Company's consumers. Exh. AG-1, p. i. The Commission is legally mandated to determine that each of the Company's proposed PPA buy out or restructuring not only mitigates transition costs; but also that the proposals result in just and reasonable rates. Without the opportunity to fully understand all components of the Company's economic analyses, the Department will not be able to determine the Company's rates are just and reasonable. Therefore, the Hearing Officer's December 2, 2004 ruling that the supplemental questions be disallowed should be overturned and the Company should respond to them.

#### **IV. CONCLUSION**

The Department should grant this appeal and order the Company to respond to the Attorney General's supplemental questions.

Respectfully Submitted,

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By:

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